

1 directly to the eminent safety of life or property. Sub 2
2 refers to communications directly related and necessary to
3 those activities which make the licensee eligible for the
4 station license held under this part. Do you see that?

5 A Yes.

6 Q Okay. Would it be fair to say then -- just
7 addressing those two issues first -- that if you're not
8 communicating related directly to eminent safety of life or
9 property or if you're not engaged in communications related
10 and necessary to those activities which make you eligible as a
11 private carrier paging company, if you're not doing those
12 things, presumably that's unauthorized communication? Is that
13 fair to say?

14 A I suppose so. I'm -- yes. That sounds reasonable
15 to me.

16 Q Right. Well, I'm asking you because you've made
17 conclusions about interference so I presume you also have to
18 make conclusions about what's proper communications.

19 A I think that's fair.

20 Q Okay. And then -- excuse me. And then Subsection 3
21 refers to testing. It says, "Communications for testing
22 purposes required for proper station and system maintenance.
23 However, each licensee shall keep such tests to a minimum and
24 shall employ every measure to avoid harmful interference." Do
25 you see that?

1 A Yes.

2 Q Okay. So obviously the FCC has made some connection
3 between testing and the possibility of harmful interference?
4 Correct?

5 A Did you say connection between?

6 Q Yes.

7 A Yes.

8 Q Okay. So, although we were having trouble grappling
9 with this concept earlier today, I take it from your
10 understanding of the FCC's rules if one is engaged in
11 excessive testing or not keeping it to a minimum then you are
12 engaged in the act of causing harmful interference?

13 A I don't read this this way.

14 Q All right. Well, let me -- it wasn't well put, but
15 the rules certainly do anticipate that if you're not keeping
16 your testing to a minimum and you're on a shared frequency
17 then you could very well be causing harmful interference to
18 somebody else. Isn't that what this rule means?

19 A I'm sorry, Mr. Joyce. I -- harmful interference to
20 me is more along the lines as its -- as we read this morning
21 and harmful interference -- I guess if you, if you -- I guess
22 some testing could be considered harmful and harmful
23 interference if it is carried to excess, yes.

24 Q Correct. Thank you. And the FCC has made it fairly
25 clear in this rule what is proper testing in that first

1 sentence, do they not?

2 A In the first sentence of Sub 3?

3 Q Yes.

4 A I see no definition for testing in that sentence at
5 all.

6 Q Well, let's go through this. Doesn't it say
7 communications for testing purposes required for proper
8 station and system maintenance?

9 A Yes.

10 Q Okay. Now, you're the expert so I guess you'd know
11 better than I would, but doesn't that mean that your testing
12 should be related to proper station and system maintenance?

13 A I believe that the sentence says that, but that's
14 not what I believe testing is about.

15 Q You've been asked to render an opinion about --

16 A And I have just --

17 Q Hear me out because I know that's a different
18 opinion, though, Mr. Peters. You've been asked to render an
19 opinion under the FCC's rules, not under accepted engineering
20 parameters, as to whether or not the evidence you've heard
21 this week constitutes harmful interference or violations of
22 the FCC's rules.

23 A Yes.

24 Q Isn't that correct?

25 A Yes.

1 Q Okay. So I'm not asking you, and I appreciate your
2 distinction, but I'm not asking you for what is the definition
3 of testing in the purest engineering sense of the term, okay?

4 A Um-hum, yes.

5 Q But looking at what the FCC says is appropriate for
6 testing, isn't it true that the FCC is saying it must related
7 to -- it must be related to proper station and system
8 maintenance? Isn't that true?

9 A That's exactly what it says.

10 Q All right. So then if somebody on a shared
11 frequency is engaged in testing even if, as you said earlier
12 in your testimony, you know, there can be all kinds of things
13 that you can do testing for, wasn't that a fair way of
14 describing your testimony earlier? There's all kinds of
15 things that you can test for? Correct?

16 A I think that I meant all kinds of things that you
17 can test with. Yes, but that's the same thing, yes.

18 Q Sure. But as far as the FCC is concerned, certainly
19 for people operating under Part 90 of the rules and certainly
20 in something as sensitive as shared frequency environment,
21 that testing has limits, does it not?

22 A Excessive testing should -- does not -- I will admit
23 that excessive testing shouldn't be done and there is a
24 limitation to testing.

25 Q But my question again, Mr. Peters, we can actually

1 | define it much more narrowly than that, can we not, under the
2 | FCC's rules?

3 | A I personally cannot, Mr. Joyce.

4 | Q The rule says that testing must be limited to proper
5 | station and system maintenance, does it not?

6 | JUDGE CHACHKIN: But what does that mean? Doesn't
7 | that cover everything, system maintenance?

8 | MR. PETERS: I -- yes. I'm having a real hard time
9 | trying to narrow this thing down when --

10 | MR. JOYCE: Okay. Well, let's go through that then,
11 | Mr. Peters.

12 | JUDGE CHACHKIN: What do you think system
13 | maintenance means, Mr. Joyce?

14 | BY MR. JOYCE:

15 | Q Mr. Peters, did you hear anything in the testimony
16 | last week to suggest that, that what the FCC engineers heard,
17 | that tone sequence going on around the clock -- maybe it
18 | wasn't 24 hours but it was certainly pretty busy. It was in
19 | the morning. It was in the afternoon, in evening. Did you
20 | hear anybody testify that that had anything to do with proper
21 | station and system maintenance?

22 | A Did I hear anyone testify that it -- no, not in
23 | those terms, I did not.

24 | Q Okay. Did you hear anyone testify that Capitol made
25 | efforts to keep that testing to a minimum?

1 A No.

2 Q Okay.

3 JUDGE CHACHKIN: I don't remember any questions
4 being asked of any witnesses relating to those --

5 MR. JOYCE: Most certainly did. I asked --

6 JUDGE CHACHKIN: Who? Who did you ask?

7 MR. JOYCE: Rusty Harrison. I said, "How long did
8 the testing go on?"

9 JUDGE CHACHKIN: Did you suggest that that was
10 improper or that it, it wasn't -- did you ask him any
11 questions as to why it was necessary to conduct it for that
12 period of time?

13 MR. JOYCE: I asked RAM's witnesses how long --
14 we've --

15 JUDGE CHACHKIN: You had the witnesses here. The
16 Bureau had the witnesses here. I don't know why questions
17 weren't put so the witnesses could have answered. What
18 purpose was this testing for?

19 MR. JOYCE: I asked Mr. McCallister how long did you
20 test the system.

21 JUDGE CHACHKIN: Mr. McCallister maintains the
22 system and he set up the system. He has nothing to do with
23 the operation of the system.

24 MR. JOYCE: Your Honor --

25 JUDGE CHACHKIN: He was the wrong witness to ask.

1 MR. JOYCE: -- there is no smoking --

2 JUDGE CHACHKIN: You still have Mr. Raymond. I hope
3 we get some answers to these questions because I think they're
4 important.

5 MR. JOYCE: They're going to deny them, Your Honor,
6 of course.

7 JUDGE CHACHKIN: I don't know what they're going to
8 do. I don't know what explanation they're going to have. But
9 certainly if the Bureau's going to make charges, presumably
10 they're going to ask these witnesses questions to explain
11 their conduct. I don't understand why these questions were
12 not asked.

13 MR. JOYCE: They were. I asked Mr. Walker. I said,
14 "Did you talk to Mr. Stone?"

15 JUDGE CHACHKIN: Mr. Walker is not an employee of
16 the station. The question is why weren't questions put to the
17 witnesses.

18 MR. JOYCE: They were, Your Honor.

19 JUDGE CHACHKIN: They were not. You're telling me
20 you asked Mr. McCallister. Mr. McCallister doesn't --

21 MR. JOYCE: Mr. Stone is not here. He was the one
22 who was there and spoke with the FCC engineers about this
23 testing.

24 JUDGE CHACHKIN: All right.

25 MR. JOYCE: I asked Mr. Walker.

1 JUDGE CHACHKIN: I hope the Bureau at least puts
2 questions to Mr. Raymond dealing with the questions they've
3 raised in their Designation Order. If they feel that this was
4 excessive or they feel it was improper testing, then it seems
5 to me they have an obligation to develop that with the
6 witness.

7 MR. JOYCE: You've kept me in this case, Your Honor.
8 I represent RAM Technologies.

9 JUDGE CHACHKIN: In the first place, let's get
10 something straight here. I required you to be a party. I had
11 nothing to do with the nature and extent of your cross-
12 examination. That was your business. I haven't restricted
13 it, only when I felt you asked an improper question. So let's
14 get that straight. Being a --

15 MR. JOYCE: I apologize, Your Honor.

16 JUDGE CHACHKIN: Well, and don't give me this
17 nonsense that I kept you in this.

18 MR. JOYCE: My point is what I'm trying to explore
19 with the witness is not necessarily what the Bureau has in
20 mind, but I am dealing with what RAM Technologies' people
21 testified about, that there was excessive testing, that they
22 would not be testing 24 hours a day, and so I'm asking what
23 would appear to be the only objective witness here those
24 questions because I know what Mr. Raymond is going to tell me
25 if I ask him.

1 JUDGE CHACHKIN: I don't know what Mr. Raymond's
2 going to say.

3 MR. JOYCE: Well, he's going to say it wasn't
4 excessive.

5 JUDGE CHACHKIN: Well, I don't know. The purpose of
6 -- the Bureau at least I expected would explore these areas.
7 I'm surprised they haven't. It's the first time I've heard a
8 suggestion that the testing was improper. It wasn't --

9 MR. JOYCE: It's in the Designation Order.

10 JUDGE CHACHKIN: I understand there may be
11 allegations but the witnesses have not been asked that
12 question --

13 MR. JOYCE: Mr. Hardman himself --

14 JUDGE CHACHKIN: -- to explain it.

15 MR. JOYCE: -- admitted last week. He said they've
16 admitted to excessive testing.

17 JUDGE CHACHKIN: This is something else. You've
18 raised the question not about excessive. You raised the
19 question of whether the testing was improper, that they had
20 served no purpose. That's what you raised here because it
21 wasn't voice and you claim the service was voice. Therefore,
22 the testing should have been voice and the fact that it was
23 tone signalling somehow raises a question that they weren't
24 really testing for the purpose that they indicated. Now,
25 those areas it seems to me should be explored.

1 MR. JOYCE: My purpose is far broader, Your Honor.

2 JUDGE CHACHKIN: Yeah. Well, I think those areas
3 should be explored and the witnesses should have an -- and I'm
4 not blaming you, but I think the Bureau has an obligation to
5 develop these areas. After all, it's in the Designation
6 Order. It would seem to me they would want an explanation
7 from the licensee as to what was going on and we have Mr.
8 Raymond. Perhaps they will ask these questions.

9 MR. HARDMAN: Your Honor?

10 MR. JOYCE: Mr. -- can I finish my cross-
11 examination, Your Honor, please because now Ken Hardman's
12 going to start testifying?

13 JUDGE CHACHKIN: He's not testifying. Yes, Mr.
14 Hardman?

15 MR. HARDMAN: Well, my concern is simply that with
16 the, with the Court's inquiry we offered Mr. Harrison who
17 testified that he was the one that conducted the tests or had
18 them conducted by -- you know, was responsible for the
19 testing, okay, and we've produced that witness and his, you
20 know, prepared direct about what he did and why he did it.

21 JUDGE CHACHKIN: Does he deal with the nature of the
22 testing and why it was --

23 MR. HARDMAN: What it did and why and --

24 JUDGE CHACHKIN: -- what the purpose was?

25 MR. HARDMAN: Exactly and, in particular, you know,

1 we've put back in what we said in response to the Notice of
2 Liability for Forfeiture which is the same declaration that he
3 said he -- stood behind in his statements and so forth and,
4 you know, what I thought I was doing at the time was giving
5 the, the parties every opportunity to find out from the
6 witness who was responsible for it what went on and why. And
7 I'm somewhat distressed to find out that there may be
8 inquiries that, you know, weren't asked of him that should
9 have been.

10 JUDGE CHACHKIN: I find it distressing also in light
11 of the Designation Order that these questions were not put to
12 the witness.

13 MS. LADEN: Your Honor, I need to clarify something
14 else.

15 JUDGE CHACHKIN: Yes.

16 MS. LADEN: I asked Mr. Harrison many questions
17 about the testing. I asked him about his drive home from,
18 from Huntington to Charleston. I asked him about how he did
19 the testing in the car. I asked -- there were --

20 JUDGE CHACHKIN: I understand.

21 MS. LADEN: I just want the record to make clear
22 that we asked a lot of questions about the testing.

23 JUDGE CHACHKIN: Yes, but what's not clear -- what's
24 not clear to me is is the Bureau still contending, as Mr.
25 Joyce is apparently contending, that the nature of the testing

1 was -- served no purpose because this was a voice -- used for
2 voice purposes. No questions were asked and that -- this is
3 the first time this has been raised, that the nature of the
4 testing itself may have served no purpose and even if --
5 besides being excessive, the question is raised as to why the
6 testing at all was conducted. Now, this is the first time
7 this has been raised.

8 MR. HARDMAN: That was Mr. Walker's testimony.

9 MS. LADEN: Yeah. I believe Mr. Walker testified
10 about this, Your Honor, about -- I believe I asked him
11 questions about the voice pagers, about whether the two-tone
12 would, would go to a voice pager, would set off the voice
13 pager, and he certainly can testify on the rebuttal again
14 about that.

15 JUDGE CHACHKIN: But I understand that, but the fact
16 of the matter is Mr. Harrison was here and he was conducting
17 the testing and if you felt there were questions raised
18 concerning the propriety of the testing, it seems to me
19 questions would have been put -- should have been put him.

20 MS. LADEN: There were questions put to him, Your
21 Honor.

22 JUDGE CHACHKIN: As to the propriety of the testing?

23 MS. LADEN: Yes, Your Honor.

24 JUDGE CHACHKIN: What was put to him concerning the
25 propriety? You've asked him how he conducted the testing. He

1 told you.

2 MS. LADEN: That's correct.

3 JUDGE CHACHKIN: You didn't, you didn't raise the
4 question that -- what were you -- what was the purpose of this
5 testing since you were not -- you could use this for --

6 MS. LADEN: I asked him about the group call. I
7 remember asking him about how he had the pagers lined up. I
8 asked him about the coverage testing.

9 JUDGE CHACHKIN: I understand, but you asked him
10 about the methodology. You didn't ask him -- you didn't raise
11 questions whether the testing itself was totally unnecessary,
12 was improper, because the nature of the -- the purpose of
13 which the testing was -- as Mr. Joyce is suggesting.

14 MS. LADEN: I believe in his direct testimony, Your
15 Honor, he testified as to the purpose of the tests.

16 JUDGE CHACHKIN: All right. Well, then I have to
17 assume if the Bureau didn't question him then the Bureau is
18 satisfied with his response. That's all I can assume. Go
19 ahead, Mr. Joyce.

20 BY MR. JOYCE:

21 Q Mr. Walker testified last week. You were here when
22 Mr. Walker testified, right, Mr. Peters?

23 A Yes, sir, I was.

24 Q So you heard me asking Mr. Walker about this tone
25 sequence?

1 A Yes.

2 Q And I asked him if in his opinion that tone sequence
3 had anything to do with testing a control link and he said
4 no. Do you remember that?

5 A You're talking about Mr. Walker sitting in this
6 room?

7 Q Yes. I'm going to get to asking for your opinion,
8 but do you remember his testimony is all I'm asking at this
9 point?

10 A I do.

11 Q Okay. And I -- it sounds like you, you disagree
12 with my recollection. My recollection is Mr. Walker said that
13 he didn't think that the tone sequence had anything to do with
14 control link problems or control link testing, and I'm
15 speaking flawly. I'm certainly not quoting Mr. Walker.

16 A Okay. There was some mention about a control link.

17 Q Right. I mean, his testimony was that that's what
18 Mr. Stone told him the tone sequence was all about, the
19 control link testing?

20 A I do recall that, yes.

21 Q Okay. Mr. Walker wasn't convinced by that
22 explanation. Do you have a same or different opinion?

23 A You've asked me for my opinion and --

24 Q Of course I have, yes.

25 A -- and basically the only thing that I can do is say

1 is there a reason for sending those tones out over the link or
2 not?

3 Q No. Please just so I can qualify because I know
4 that broadly speaking you've already told us sure, there might
5 be some reason for sending out tones like that --

6 A Yes.

7 Q -- but my question is much more specific. Is that
8 standard operating procedure, four days in a row, 24 hours a
9 day, to take a three-tone sequence and keep duplicating it
10 over and over again to test the control link? Is that
11 standard operating procedure?

12 A It could be. You're asking me to know what Capitol
13 was doing during that paging sequence and I really don't, but
14 it's conceivable that it could be used to test that link for
15 reliability.

16 Q So I gather that it's also conceivable that that
17 test has absolutely nothing to do with testing a control link?

18 A That's absolutely true.

19 Q All right. It's also conceivable that that
20 transmission is nothing more than harmful interference? Isn't
21 that true?

22 A Not in my view, sir. There was a purpose for those
23 tests. Otherwise they wouldn't have been there.

24 Q Well -- but you just told me two answers ago that
25 you personally had no idea why Capitol was doing that.

1 A Yes, that's correct. I have no --

2 Q Okay.

3 A -- absolute knowledge of why Capitol was doing that.

4 Q Okay. So I understand the fine distinction here,
5 that you could speculate as to some possible reason why
6 they're doing it, correct, Mr. Peters?

7 A Speculate -- you want me to speculate a possible
8 reason?

9 Q I don't want you to, but I think what you're saying
10 is sure, there's some possible reason why they're doing that,
11 right?

12 A Yes.

13 Q But they never told you what that reason was?

14 A I don't believe they did but, I mean, I've talked
15 with people since that time and understood that they were --
16 and heard Rusty Harrison's testimony that they were out
17 testing pagers. That's what I would assume they were for.

18 Q Okay. So the answer is they never told you, the
19 Capitol folks, why they were doing that?

20 A Only through testimony.

21 Q Okay. Now, getting back to Mr. Harrison, he talked
22 about testing group call? Correct?

23 A He did.

24 Q Okay. Now, I thought I understood what group call
25 testing is, but maybe I don't. I thought the group call

1 testing that Mr. Harrison was doing was taken ten pagers,
2 putting them on a table, then calling a number to see if those
3 ten pagers in a group would go off. That's group testing, is
4 it not?

5 A That -- I think that's right.

6 Q Okay. So it's fair to say -- we don't have to put
7 Mr. Harrison back on the stand and we don't have to have Mr.
8 Stone here for you in your expert opinion to tell me that that
9 tone sequence that the FCC engineers heard doesn't have
10 anything to do with that group test?

11 A No. I told you that earlier.

12 Q That's what I thought. Okay. Just so we
13 understand. But you and I will also agree that that test
14 would be taking up shared air time, would it not?

15 A Some, yes.

16 Q Okay. So that if, if somebody was trying to get out
17 legitimate pages while that testing was going on their pages
18 would be delayed? Correct?

19 A Absolutely.

20 Q All right.

21 A If everything was functional and properly operating.

22 Q Right. Okay. And, though, we've heard testimony
23 about the FCC saying that on some occasions RAM was
24 transmitting on top of Capitol, isn't it true that what the
25 FCC engineers heard was RAM transmitting on top of this test,

1 | whatever the heck the test was?

2 | A I would assume that that's right.

3 | Q Okay.

4 | A I mean, from the testimony, yes.

5 | Q Okay. And isn't it also fair to assume in your
6 | expert opinion that if that test is not legitimate under .9405
7 | (sic) of the rules in that it's not related to proper station
8 | operation, if there's not a good purpose for it, then it
9 | wouldn't be improper for somebody with legitimate pages to try
10 | to get those pages out there, would it?

11 | A Well, that's absurd. I'm sorry, sir. That, that
12 | just -- that's like saying if I commit a crime you can commit
13 | a crime. That just doesn't make sense to me.

14 | Q Maybe your misunderstood my question.

15 | A The idea is -- when you share a channel you don't
16 | transmit when somebody else is transmitting. It's that
17 | simple. This is not mysterious.

18 | Q I'm a very simple person, Mr. Peters. You're going
19 | to have to break this down for me. Now, it would seem to me
20 | under 90.405 of the rules, and I thought we had established
21 | this earlier, there's proper testing and there's improper
22 | testing. Correct?

23 | A I don't know. I've only run into the proper form of
24 | testing, sir.

25 | Q I'm not going to ask this nice woman to play back

1 your answer before, but --

2 A You really don't have to, and I'm not trying to
3 dance with you. What I'm trying to say is that I don't know
4 of very many people that have improperly tested. I don't
5 consider the tests that we've been talking about in this
6 testimony as improper in any sense or fashion, and if you're
7 trying to get me to say that those tests are improper, I just
8 simply will not say that.

9 Q I understand that, Mr. Peters. I really didn't
10 expect to get that answer from you. My question was so that
11 we don't have to go back over an hour's worth of testimony. I
12 gather under the FCC's rules that there is legitimate or
13 proper testing and there's improper testing? Correct? And
14 I'm not asking you to say that Capitol engaged in improper
15 testing, but there, there is improper testing? Correct?

16 A Yes.

17 Q All right. And it, it can take a variety of forms.
18 All we know for certain is that if it's not related to proper
19 station and system maintenance the FCC considers it improper.

20 A I am not going to answer that question, sir, because
21 there may be other rules in the FCC rules the preempt this --

22 Q Okay.

23 A -- or that permit other forms of paging. I'm just
24 not that expert on, on FCC rules or the interpretation thereof
25 except in very limited categories and this falls out my --

1 falls outside my area of expertise to distinguish between
2 proper and improper testing. When I set up a testing sequence
3 for a client or instruct a client to do a particular test it's
4 for a reason. I don't instruct the client to do improper
5 testing. I don't think I've ever in my entire professional
6 career run into somebody that improperly tested, so I really
7 am not expert in that field of improper testing.

8 Q But your direct testimony you gave Capitol and
9 opinion that their testing was proper?

10 A Yes. To me it was proper.

11 Q So which is it, Mr. Peters? Either you know what
12 you're talking about when it comes to testing, you're an
13 expert in it, or you're not, and I'm not trying to make fun of
14 your testimony, Mr. Peters?

15 A Trust me when I believe your statement. I am an
16 expert in testing. I am an expert in finding and determining
17 what tests are going to be required to perform and to provide
18 what information to a system operator. To me the tests that
19 we've been talking about and we've heard about in this direct
20 testimony have been perfectly proper and have gone a long way,
21 if used properly, to provide very valuable information. Those
22 tests are frequently used in my profession and in my dealings
23 with my client and I recommend them and I find nothing
24 improper about this, so I can't really speculate on what could
25 have happened otherwise or outside the scope of that

1 information.

2 Q Let's try this another way, Mr. Peters. Set aside
3 whether or not Capitol was even engaging in testing that week
4 in August of 1992. Is it fair, is it fair to say that if they
5 were just sending static out over that line intentionally that
6 that's not proper communications, that's in violation of the
7 FCC's rules? Isn't that true?

8 A If it was purposeless, which I think is the
9 implication, then that's probably correct, yes.

10 Q All right. So you're not testifying that this
11 shared frequency requirement of RAM and Capitol is ultimate,
12 the RAM had to shut down even if Capitol was sending just
13 garbage over the frequency? You're not saying that, are you?

14 A No, not at all.

15 Q Okay. But I was getting to the point earlier when I
16 asked you whether or not RAM that has legitimate pages would
17 be allowed to transmit over an improper signal, and my
18 question was a test, but let's call it an improper signal, and
19 I believe you said one wrong doesn't -- two wrongs don't make
20 a right, but what RAM does in that case is perfectly proper,
21 isn't it?

22 A I don't know what RAM does in that case.

23 Q All right. It, it was a long winded question. For
24 RAM to communicate legitimate pages on top of anybody else
25 who's just transmitting garbage, that's okay, isn't it?

1 A I think that that's something for someone else to
2 decide. I'm not, I'm not trying to sidestep your question.
3 Let me suggest that if a transmission is illegal and RAM says
4 it's an illegal transmission, I'm going to transmit over it,
5 if you're asking me to say under those circumstances that
6 would be okay, I'd have to make darn sure that the
7 transmission that they transmitted over was illegal.

8 Q Of course.

9 A And, and I'm not even sure then that the rules
10 permit that because if there's some small chance that that
11 transmission was legal, even if RAM didn't understand it or
12 it's purpose, then I can't passively sit up here and give them
13 the right or the authority or grant them any reason to
14 transmit over that signal. So the hypothetical is, is neat,
15 but it's missing the point and, and I think that a test is a
16 permissible form of communication on this channel. Whether or
17 not RAM wanted to send its signals or whether they had to wait
18 for a few seconds or whatever the 20 seconds was or 60 seconds
19 was, testing is legitimate. It's provided for in the FCC
20 rules. We've settled that -- we settled that question last
21 week.

22 Q Let's put aside the term testing because you seem to
23 have difficulty with that, Mr. Peters, and I --

24 A I do.

25 Q -- appreciate that from an engineer's perspective.

1 I find it hard to believe that you would testify as an expert
2 that if anybody on a shared frequency environment, and we know
3 that these are commercial paging operations, if somebody were
4 to take their CB radio, for instance, hook it up to a
5 transmitter in some way and just talk, send garbage, send non-
6 business communications on that frequency around the clock,
7 you're not saying that RAM or anybody else who's a legitimate
8 licensed operator had to stop, back up all their paging
9 traffic for days on end or however long it takes until --
10 that's not what you're saying, is it?

11 A I have no problem with that at all and, in fact,
12 under those circumstances RAM would be perfectly -- it's
13 permissible in my view to transmit.

14 Q Okay. So there's, there's -- what you're telling me
15 is there's a range of reasonableness in a shared frequency
16 environment, that there's extreme interference, and you
17 wouldn't expect somebody who's providing service to
18 ambulances, doctors, hospitals, sheriffs, you wouldn't expect
19 them to forever hold back those important pages when they're
20 monitoring a frequency and they hear nothing but garbage? You
21 wouldn't expect that would you, Mr. Peters?

22 A I'm trying to think through your entire question.

23 Q I appreciate that.

24 A And, and I think that the -- perhaps a better word
25 might be the purpose of the communications, not the fact that

1 somebody was communicating.

2 Q Well, we know -- and you're not an FCC expert, I
3 know that, but the FCC has said it must be permissible
4 communications so let's use that term, right, permissible
5 communications.

6 A That would be fine.

7 Q Is that acceptable?

8 A That's fine.

9 Q Okay. So on -- what you're telling me is that on
10 one range of the spectrum you wouldn't expect RAM to forever
11 hold back its traffic if somebody was just constantly
12 transmitting nothing but impermissible communications? You
13 wouldn't expect that, would you?

14 A That's correct.

15 Q Okay. So under those circumstances they can hold
16 their communications up, monitor, they determine that it's
17 nothing but impermissible communications, green light, go
18 ahead. You've got doctors, hospitals, ambulances. That would
19 be okay for you to signal your signal out? Correct? We've
20 established that?

21 A Yes.

22 Q Okay. On the other range of that spectrum, I take
23 it, would be less egregious circumstances, maybe occasional
24 lengthy testing of the system, something that might be
25 arguably permissible, you're going to tell RAM Technologies

1 well, there might be some doubts about whether it's
2 permissible, whether it's not, hold up your communications
3 until the FCC comes out here and investigates? Is that what
4 you're telling me on the other side?

5 A Not in the least.

6 Q Okay. Well, what is it that RAM Technologies should
7 have done in that case?

8 A What should they have done in the case of the
9 testing?

10 Q No. In the case where it appeared to them that it
11 was impermissible communications but they couldn't get the FCC
12 out there quick enough to do an investigation but they still
13 got 10,000 paging subscribers out there and they include
14 doctors and ambulances and sheriffs. What should they have
15 done in that case?

16 A Did they really include all those people?

17 Q Yes, they did.

18 A Mr. Joyce, you're asking me to, to define the
19 difference between a shared channel and, and a non-shared
20 channel. In the one extreme that you just mentioned where you
21 would permit RAM to, to make a judgment concerning who's on
22 that channel and what kind of traffic is on that channel and
23 then if they didn't like it they'd just go ahead and run over
24 it. That's one issue. That's not sharing. Sharing means
25 that if there's any question about the validity of the